

ECF FILED

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:)	BANKRUPTCY CASE NO.
)	BK-S-09-12905-LBR
ERIC A. GERSON,)	Chapter 7
)	
Debtor.)	Hearing Date: August 25, 2010
)	Hearing Time: 11:00 a.m.
)	Estimated Length of Hearing: 5 Minutes

**TRUSTEE'S MOTION FOR ORDER AUTHORIZING THE SALE AND LIQUIDATION OF
LLC MEMBERSHIP INTERESTS and MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT THEREOF**

Timothy S. Cory, chapter 7 trustee of the estate of the above-named Debtor (the "Trustee"), by and through counsel, hereby moves the Court for an order authorizing the sale and liquidation of LLC membership interests included in the bankruptcy estate of the above-named Debtor, pursuant to 11 U.S.C. § 363(b). This Motion is supported by the following Points and Authorities and any evidence or argument presented at the hearing on this Motion.

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1 WHEREFORE, the Trustee respectfully requests that this Court enter an order authorizing the
2 sale and liquidation of the Debtor's LLC membership interests pursuant to the terms and conditions
3 set forth below.

4 DATED this 21st day of July, 2010.

5 

6 Duane H. Gillman
7 Michael F. Thomson
8 Durham Jones & Pinegar
9 Attorneys for Trustee

10 **POINTS AND AUTHORITIES**

11 **STATEMENT OF FACTS**

12 1. The property being sold is the Debtor's membership interests in two limited liability
13 companies: Redwood Radiology Properties, LLC ("Redwood") and Sotoyome Medical Building,
14 LLC ("Sotoyome"). (The Debtor's membership interests in Redwood and Sotoyome are referenced
15 herein together as the "Property").

16 2. The terms of the sales are outlined in the agreements attached hereto as **Exhibit 1**
17 (Redwood Agreement) and **Exhibit 2** (Sotoyome Agreement). The sales price for the membership
18 interests in Redwood is \$144,206.00 together with interest thereon from January 1, 2010 through
19 June 30, 2010 in the amount of \$3,785.41. See Exhibit 1. The sales price for the membership
20 interests in Sotoyome is \$299,182 together with interest thereon from January 1, 2010 through June
21 30, 2010 in the amount of \$7,853.53. See Exhibit 2.

22 3. The purchaser of the membership interests in Redwood is Redwood. See Exhibit 1.
23 The purchaser of the membership interests in Sotoyome is Sotoyome. See Exhibit 2.
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1 4. The purchase prices will be paid to the Trustee within 10 days after the entry of a final
2 order of this Court approving the respective sales. See Exhibits 1 & 2. The Property is being sold
3 pursuant to the Operating Agreements of Redwood and Sotoyome, with one exception: while the
4 Operating Agreements provide that the purchase prices are payable in semiannual installments (June
5 30th and December 31st), beginning June 30, 2010, for a period of between 3 and 6 years¹, Redwood
6 and Sotoyome have agreed to pay the purchase prices within 10 days after the entry of a final order
7 by this Court.

8 5. The Trustee believes the sales of the Property described above are in the best interests
9 of creditors of this estate because the proposed sales prices are equal to the current value of the
10 Debtor's interests in the Property. Said valuations are based on balance sheets and real property
11 appraisals as of December 31, 2009. (Copies of the appraisal/valuation information can be obtained
12 from Trustee's counsel upon request).

13 6. In addition, the methods of sale are in the best interests of creditors because, according
14 to the Operating Agreements of Redwood and Sotoyome, the only mechanism for selling the
15 membership interests is according to such terms. Specifically, pursuant to the Operating Agreements
16 of Redwood and Sotoyome, a member of said entities may not transfer its membership interest to a
17 third party unless that third party is a revocable trust (and the member retains a beneficial interest in
18 the trust) or a business entity whose interests are at least 51% owned by the member. Thus, the only
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20
21 ¹ The general repayment period is three years, or six equal semiannual installments of principal and
22 interest. However, where there are more than 6 membership interests being paid for by the Redwood
23 or Sotoyome at any one time, the payments to all withdrawing members will be reduced on a pro rata
24 basis and the repayment term will be extended accordingly, for a period of up to three years beyond
the original three-year repayment period.

1 mechanism for the Trustee to transfer or liquidate the Debtor's membership interests is by
2 withdrawing the membership interests and selling the membership interests back to the LLC entities.

3 7. Notably, pursuant to the request of the only creditor who has filed a proof of claim in
4 this case, Michael A. Baron, M.D., Ltd., the Trustee attempted to facilitate the assignment of the
5 Property to Dr. Baron. However, the LLC entities and Dr. Baron were unable to come to terms on
6 such an assignment. Thus, the Trustee believes that selling the Property, pursuant to the terms set
7 forth above, is in the best interests of creditors of this estate.

8 8. The proceeds from the sale of the Property will be held by the Trustee pending further
9 order of the Court.

10 **LAW AND ARGUMENT**

11 11 U.S.C. § 363(b) allows the Trustee to sell the Property after notice and a hearing, because
12 it is property of the Debtor's bankruptcy estate. The Trustee believes the sale of the Property to
13 Redwood and Sotoyome, respectively, is in the best interests of creditors of this estate because the
14 proposed sales prices (\$144,206.00 for the Redwood membership interests and \$299,182 for the
15 Sotoyome membership interests) are equal to the current value of the Debtor's interests in the
16 Property. Said valuations are based on balance sheets and real property appraisals as of December
17 31, 2009. (Copies of the appraisal/valuation information can be obtained from Trustee's counsel upon
18 request).

19 In addition, the methods of sale are in the best interests of creditors because, according to the
20 Operating Agreements of Redwood and Sotoyome, the only mechanism for selling the membership
21 interests is according to such terms. Specifically, pursuant to the Operating Agreements of Redwood
22 and Sotoyome, a member of said entities may not transfer its membership interest to a third party
23

1 unless that third party is a revocable trust (and the member retains a beneficial interest in the trust) or
2 a business entity whose interests are at least 51% owned by the member. Thus, the only mechanism
3 for the Trustee to transfer or liquidate the Debtor's membership interests is by withdrawing the
4 membership interests and selling the membership interests back to the LLC entities.

5 Finally, the payment terms are more favorable than what is generally required under the
6 Operating Agreements: while the Operating Agreements provide that the purchase prices are payable
7 in semiannual installments (June 30th and December 31st), beginning June 30, 2010, for a period of
8 between 3 and 6 years, Redwood and Sotoyome have agreed to pay the purchase prices within 10
9 days after the entry of a final order by this Court. Thus, the Trustee believes that selling the Property,
10 pursuant to the terms set forth in **Exhibits 1 & 2**, is in the best interests of creditors of this estate.
11 Therefore, the Trustee requests that this Court approve the sale of the Property as described and under
12 the terms set forth in the attached **Exhibits 1 & 2**.

13 CONCLUSION

14 Based on the foregoing, the Trustee respectfully requests that this Court enter an order
15 authorizing the sale and liquidation of the Property pursuant to the terms and conditions set forth
16 above.

17 DATED this 21st day of July, 2010.

18 

19 Duane H. Gillman
20 Michael F. Thomson
21 Durham Jones & Pinegar
22 Attorneys for Trustee
23
24

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **TRUSTEE'S MOTION FOR ORDER AUTHORIZING THE SALE AND LIQUIDATION OF LLC MEMBERSHIP INTERESTS and MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** was served this 24 day of July, 2010, via regular U.S. mail, postage prepaid upon all parties appearing on the attached mailing matrix and upon the following:

Sotoyome Medical Building, LLC
c/o Robert S. Rutherford, Esq.
Anderson, Zeigler, Disharoon
Gallagher & Gray
50 Old Courthouse Square, 5th Floor
Santa Rosa, CA 95402

Redwood Radiology Properties, LLC
c/o Robert S. Rutherford, Esq.
Anderson, Zeigler, Disharoon
Gallagher & Gray
50 Old Courthouse Square, 5th Floor
Santa Rosa, CA 95402



Durham Jones & Pinegar

Label Matrix for local noticing
0978-2
Case 09-12905-lbr
District of Nevada
Las Vegas
Wed Jul 21 08:18:20 PDT 2010

Anthem Country Club
One Club Side Drive
Henderson NV 89052-6663

Dept Employment Training Rehabilitation
Employment Security Division
500 East Third Street
Carson City NV 89713-0002

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MICHAEL BARON, M.D.
C/O JAMES D. GREENE, ESQ.
3960 HOWARD HUGHES PKWY, SUITE 700
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NV Dept of Taxation
Bankruptcy Division
555 East Washington
Suite 1300
Las Vegas NV 89101-1046

U.S. TRUSTEE - LV - 7
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ERIC A GERSON
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Las Vegas NV 89155-1401

Dept of Motor Vehicles
and Public Safety
Records Section
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Heather Gerson
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Rice Silbey Reuther & Sullivan
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Las Vegas NV 89169-5983

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c/o James D. Greene, Esq.
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Las Vegas, NV 89169-5983

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North Las Vegas NV 89030-7120

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United States Bankruptcy Court
300 Las Vegas Blvd., South
Las Vegas, NV 89101-5833

Clark County Treasurer
c/o Bankruptcy Clerk
500 South Grand Central Pkwy
Post Office Box 551220
Las Vegas NV 89155-1220

Eric A. Gerson MD Ltd.
10 Old Marsh Ct
Henderson NV 89052-6660

(p)INTERNAL REVENUE SERVICE
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State of Nevada
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PO Box 78148
Phoenix AZ 85062-8148

TIMOTHY S CORY
8831 WEST SAHARA AVE.
LAS VEGAS, NV 89117-5865

EXHIBIT 1

**REDWOOD RADIOLOGY PROPERTIES, LLC
AGREEMENT FOR SALE AND LIQUIDATION
OF MEMBERSHIP INTEREST**

This Agreement for the sale and liquidation of Membership Interest is entered _____, 2010, by and between Redwood Radiology Properties, LLC, a California limited liability company (the "Company") and Timothy S. Cory, Trustee of the Eric A. Gerson Chapter 7 bankruptcy estate ("Seller").

RECITALS

A. As of March 4, 2009, Eric A. Gerson, M.D. ("Dr. Gerson") was a Member of the Company.

B. On March 4, 2009, Dr. Gerson filed a voluntary petition under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court").

C. Seller is the duly appointed Trustee of Dr. Gerson's Chapter 7 bankruptcy estate.

D. Pursuant to notice dated September 29, 2009, Seller elected to liquidate Dr. Gerson's interest in the Company pursuant to Section 7.4 of the Company's Operating Agreement dated January 1, 2005 (the "Operating Agreement").

E. Capitalized terms not defined in this Agreement have the meaning given them in the Operating Agreement.

THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Seller hereby sells, transfers, conveys and surrenders Seller's Membership Interest to the Company, and the Company hereby purchases and liquidates Dr. Gerson's Membership Interest. This transaction is effective January 1, 2010, and Dr. Gerson's Membership Interest in the Company is terminated as of that date. As of January 1, 2010, neither Dr. Gerson nor Seller will have any further interest in the capital, profits or losses of the Company.

2. This transaction is contingent on approval of this Agreement by the Bankruptcy Court.

3. Within ten (10) days after the entry of a final order by the Bankruptcy Court approving this Agreement, the Company will pay Seller \$144,206 together with 5.25% interest thereon from January 1, 2010 through June 30, 2010 totaling \$3,785.41, for and in complete liquidation of Dr. Gerson's Membership Interest.

4. The sale described in this Agreement is being made by Seller as is, where is, with no representations or warranties of any kind

5. Buyer and Seller agree that, if a dispute arises over the payment described in Paragraph 3 herein and litigation commences over such dispute, the prevailing party shall be entitled to recover their reasonable attorney fees and costs incurred in the action.

SELLER:

Timothy Cory, Trustee
of the Eric A. Gerson
Chapter 7 bankruptcy estate

THE COMPANY:

**REDWOOD RADIOLOGY
PROPERTIES, LLC, a California
limited liability company**

By _____
Harry Phillips, Manager

EXHIBIT 2

**SOTOYOME MEDICAL BUILDING, LLC
AGREEMENT FOR SALE AND LIQUIDATION
OF MEMBERSHIP INTEREST**

This Agreement for the sale and liquidation of Membership Interest is entered _____, 2010, by and between Sotoyome Medical Building, LLC, a California limited liability company (the "Company") and Timothy S. Cory, Trustee of the Eric A. Gerson Chapter 7 bankruptcy estate ("Seller").

RECITALS

A. As of March 4, 2009, Eric A. Gerson, M.D. ("Dr. Gerson") was a Member of the Company.

B. On March 4, 2009, Dr. Gerson filed a voluntary petition under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court").

C. Seller is the duly appointed Trustee of Dr. Gerson's Chapter 7 bankruptcy estate.

D. Pursuant to notice dated September 29, 2009, Seller elected to liquidate Dr. Gerson's interest in the Company pursuant to Section 7.4 of the Company's Operating Agreement dated January 1, 2005 (the "Operating Agreement").

E. Capitalized terms not defined in this Agreement have the meaning given them in the Operating Agreement.

THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Seller hereby sells, transfers, conveys and surrenders Seller's Membership Interest to the Company, and the Company hereby purchases and liquidates Dr. Gerson's Membership Interest. This transaction is effective January 1, 2010, and Dr. Gerson's Membership Interest in the Company is terminated as of that date. As of January 1, 2010, neither Dr. Gerson nor Seller will have any further interest in the capital, profits or losses of the Company.

2. This transaction is contingent on approval of this Agreement by the Bankruptcy Court.

3. Within ten (10) days after the entry of a final order by the Bankruptcy Court approving this Agreement, the Company will pay Seller \$299,182 together with 5.25% interest thereon from January 1, 2010 through June 30, 2010 totaling \$7,853.53, for and in complete liquidation of Dr. Gerson's Membership Interest.

4. The sale described in this Agreement is being made by Seller as is, where is, with no representations or warranties of any kind

5. Buyer and Seller agree that, if a dispute arises over the payment described in Paragraph 3 herein and litigation commences over such dispute, the prevailing party shall be entitled to recover their reasonable attorney fees and costs incurred in the action.

SELLER:

Timothy Cory, Trustee
of the Eric A. Gerson
Chapter 7 bankruptcy estate

THE COMPANY:

**SOTOYOME MEDICAL BUILDING,
LLC, a California limited liability
company**

By _____
Harry Phillips, Manager